# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 10648 of 2005

**For Approval and Signature:**

**THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS**
**THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**JAYANTBHAI B. MODI & 17 - Petitioner(s)**

**Versus**

**COLLECTOR, BHARUCH & 2 - Respondent(s)**

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**Appearance :**

MR DHAVAL D VYAS for Petitioner No(s).: 1,2,3,4,5,6,7,8,9, 10,11,12,13,14,15,16,17.
MR HL JANI, AGP for Respondent No(s).: 1,2.

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**CORAM :THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS**
**THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 27/06/2005**

**ORAL JUDGMENT**

**(Per : THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA)**

Rule. Mr. HL Jani, Ld. AGP waives service of rule on behalf of respondents.

2. In this petition the grievance has been made that respondent no. 1 has wrongly passed order dated 26th April, 2005 turning down the application dated 17th February, 2004 of the petitioners to regularize the premises owned by them on the land in question upon payment of requisite fees. It is averred by the petitioners that they are the bonafide purchasers of the premises in question from the property developer after payment of consideration, but they have been cheated by the developer since the land on which their premises are constructed belonged to the Government. The petitioners are sought to be evicted from the said land and they have been called upon to demolish their premises.

3. It appears from the record of this petition that several litigations pending relating to the premises in question are pending. There are civil suits pending in the Court of Civil Judge at Bharuch. There was a petition filed earlier being Special Civil Application No. 465 of 2002 which was ultimately withdrawn on 24th November, 2003 on the ground that the suit was pending and now the present petition. However, Mr. DD Vyas, learned advocate for the petitioners states that in this petition his prayer is very limited. His grievance is that the impugned order has been passed by respondent no. 1 without affording to petitioners any

opportunity of hearing. Further the order is passed solely on the ground that since the property in dispute is commercial, it cannot be regularized under the provisions of the Bombay Land Revenue Code. Mr. Vyas has placed reliance on section 62 of the Code to repel the ground advanced by respondent no. 1 for rejecting the application. Plain reading of section 62 does not indicate that it relates to only residential premises and not to commercial. It also does not indicate that the petitioners were granted opportunity of hearing. In view of the same, it will be necessary for this Court to quash the impugned order of respondent no. 1.

4. In our opinion, the following directions would meet the ends of justice in the aforesaid circumstances :-

I. Impugned order dated 26th April, 2005 of respondent no. 1 is hereby quashed and set aside.

II. Respondent no. 1 is directed to reconsider the application dated 17th February, 2004 submitted by the petitioners for regularization of construction in question within three weeks from the date of this order after granting opportunity to the petitioners of hearing.

III. Respondent no. 1 shall give due intimation with regard to the date of hearing fixed by him to enable the petitioners to remain personally present and make their oral representation to him also.

IV. After the hearing is concluded respondent no. 1 shall pass order within three weeks from that date. Respondent no. 1 shall give detailed reasons if he decided to turn down the application of the petitioners on the same ground i.e. on the ground that commercial property cannot be regularized by quoting appropriate provisions of law under which such regularization is prohibited.

V. As stated by Mr. Vyas the petitioners shall withdraw the suit being Civil Suit

No. 10 of 2002 pending before the Ld. Civil Judge [SD] at Bharuch, as well as other proceedings, if there are any, relating to this very subject matter, before the petitioners appear before the Collector on the date of hearing.

In view of the aforesaid directions, the petition stands allowed. Rule made absolute with no order as to costs.

[ Kshitij R Vyas, J. ]

[ Akshay H Mehta, J. ]

* Pansala.